



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 15, 1997

Mr. Edward M. Sosa  
First Assistant County Attorney  
El Paso County, Texas  
County Courthouse  
500 E. San Antonio, Room 203  
El Paso, Texas 79901

OR97-2749

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110816.

The Office of the District Attorney for El Paso County (the district attorney) received two requests for information related to a sexual harassment complaint against a specific employee of the district attorney. We have combined these two requests for information into one ruling with the above-referenced identification number. You assert that the information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

We note in this case that one of the requestors knows the identity of the alleged victim of the sexual harassment. Therefore, based on *Ellen*, we conclude the district attorney must withhold all of the information submitted to our office in order to protect the privacy interests of the alleged victim, with the following exceptions. First, we believe, given the fact that the district attorney reached a settlement with the alleged victim in this matter, there is a legitimate public interest in a summary of the issues related to this allegation of sexual harassment, and the terms of the settlement reached. Thus, the district attorney must release a copy of the premediation submission marked as Exhibit J as well as a copy of the complaint filed with the Equal Employment Opportunity Commission marked as Exhibit E, with the name of, and any other identifying information related to, the alleged victim or any witnesses redacted. We have also marked certain information in Exhibit E which must be withheld under common-law privacy. In addition, the district attorney must release a copy of the settlement agreement with the name of the alleged victim redacted. Finally, the district attorney must release the materials contained in the folder you have marked as "Group 1."<sup>1</sup>

The court in *Ellen* did not, however, reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity or the content of his statement and we decline to extend such protection here, as we believe there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace. *See, e.g.*, Open Records Decision Nos. 484 (1987), 400 (1983). Consequently, the district attorney must not redact the name of the accused from any of these documents as the public interest in his identity outweighs any privacy interest he may have in the information. *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).


We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

---

<sup>1</sup> The only information required to be disclosed by this ruling for which you appear to have raised an exception is the terms of the settlement agreement. The final terms of a settlement agreement are not excepted by section 552.103. Open Record Decision Nos. 245 (1980), 139 (1976). As we resolve your request under section 552.101, we need not address your arguments under sections 552.103, 552.107 or 552.111.

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 110816

Enclosures: Submitted documents

cc: Mr. David Crowder - Reporter  
El Paso Times Herald  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)

Ms. Betsy McArthur  
KVIA-TV  
4140 Rio Bravo  
El Paso, Texas 79902  
(w/o enclosures)